

S. 1688

The purpose clause of the National Security Act of 1947 (P. L. 80-253) states that: "In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; . . ."

The Act then goes on to establish the Central Intelligence Agency and the position of the Director of Central Intelligence and in Section 102(c)(3) specifically charges the DCI with responsibility " . . . for protecting intelligence sources and methods from unauthorized disclosure . . ."

The CIA Act of 1949 (P. L. 81-110) grants the DCI authority to protect such sources and methods by exempting the Agency " . . . from the provisions . . . of any . . . law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency . . ."

S. 1688 raises a serious question of statutory interpretation concerning possible conflict between S. 1688 and the authorities and responsibilities now reposed in the Director by the provisions of law referred to above.

S. 1688 specifically authorizes adversary procedures which pose a serious paradox--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

In sum enactment of the bill without a full exemption for CIA and other members of the intelligence community such as NSA would be a most serious obstacle to the effective protection of intelligence sources and methods. Without a complete exemption, S. 1688 would seriously weaken the Agency's efforts to prevent penetration by a hostile intelligence service, to ensure that its employees are suitable in all respects for employment in this sensitive Agency, and in general make it much more difficult for the Director of Central Intelligence to discharge his responsibilities under existing law.

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S. 1438

The purpose clause of the National Security Act of 1947 (P. L. 80-253) states that: "In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States;...."

The Act then goes on to establish the Central Intelligence Agency and the position of the Director of Central Intelligence and in Section 102(c)(3) specifically charges the DCI with responsibility "...for protecting intelligence sources and methods from unauthorized disclosure...."

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S. 1438 raises a serious question of statutory interpretation concerning possible conflict between S. 1438 and the authorities and responsibilities now reposed in the Director by the provisions of law referred to above.

S. 1438 specifically authorizes adversary procedures which pose a serious paradox--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

A detailed analysis and explanation of the adverse impact of the bill on the fundamental security interests of the Agency is attached. In sum they make clear that enactment of the bill without a full exemption for CIA and other members of the intelligence community such as NSA would be a most serious obstacle to the effective protection of intelligence sources and methods. Without a complete exemption, S. 1438 would seriously weaken the Agency's efforts to prevent penetration by a hostile intelligence service, to ensure that its employees are suitable in all respects for employment in this sensitive Agency, and in general make it much more difficult for the Director of Central Intelligence to discharge his responsibilities under existing law.

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Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held by any officer of the Executive Branch, or by any outside parties of organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter other than the performance of official duties.

Effect:

The language is so broad that it could prohibit an agency from noting the attendance of an employee at meetings or gatherings of subversive and radical groups seeking to undermine the Government of the United States.

Section 1 (d). Prohibits requiring an employee to report his unofficial outside activities unless there is reason to believe they conflict with official duties.

Effect:

This section is of primary importance to security agencies which for security reasons are concerned with outside activities of employees. Contacts with foreign officials should be reported as a matter of information to protect the employee should the official be a member of an intelligence service. Similarly, security agencies must review publications and speeches of employees in advance to insure that there is no inadvertent disclosure of classified information.

Section 1 (e). Prohibits requiring or requesting any applicant or employee to submit to interrogation concerning: his personal relationship with any person related to him by blood or marriage, his religious beliefs or practices, or his attitude or conduct with respect to sexual matters. Prohibits the use of psychological testing into these same areas. These questions may be asked only by a physician to determine if an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge. Section 6 provides CIA and NSA the use of psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

Psychological testing in these areas is an important part of the total screening process to weed out applicants with undesirable traits. The exemption provided by Section 6 does not recognize that psychological screening is an integral part of the processing in every case.

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Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information as stated in Section 1 (e) above. Section 6 provides CIA and NSA use of the polygraph in these proscribed areas on the same basis as above.

Effect:

As with psychological testing, polygraph testing is of primary concern to security agencies who have found it to be an invaluable supplement to field investigations but uniquely effective in detecting certain latent types of security vulnerabilities. The exemption provided by Section 6 does not recognize that polygraph testing is an integral part of processing in every case.

Section 1 (i). Prohibits requesting any employee to disclose his total financial worth or liabilities. Excepted are employees who make final determinations with respect to claims requiring expenditure of federal funds. Also excepted are reports for determining liabilities or obligations imposed by law. CIA and NSA under Section 6, may inquire into the financial matters of an employee or applicant after a finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

The broad language could prohibit inquiring into such matters as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, not directly related to national security and not covered by the exemption granted CIA and NSA.

Section 1 (j). Prohibits requesting financial disclosure from those employees excepted under the first proviso of subsection (i) above other than specific items tending to indicate a conflict of interest.

Effect:

Full financial disclosure assists the employee and the Government in making a difficult decision as to conflict of interest. Without full disclosure, this burden apparently is placed entirely upon the employee.

Section 1 (k). Prohibits requiring an employee, under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of CIA and NSA, counsel must be either another employee of, or approved by, the agency involved. This right inures to the employee when first questioned and does not require that the employee be accused of any wrongdoing before he may request presence of counsel or friend.

ALL INFORMATION CONTAINED

Effect:

This section is of concern to all agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is then entitled to counsel. This is of even more concern to the security agencies which may have to question an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

Effect:

This section, combined with Section 4 below, could seriously undermine the authority of any agency to conduct its business. For example, any employee being transferred could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

Effect:

This section with section 1 (1) is most serious. With the written consent of any person aggrieved, any employee organization may intervene in such action. This could establish a basis for jurisdictional conflicts between competing unions. Further, this section and Section 5 establish two new forums for an employee to contest his termination. Since court action is against the offending supervisor rather than the department or agency; the practical result is litigation between employees. This can expose supervisors to continued harassment by disgruntled employees resulting in a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility. With respect to applicants, this section has most serious implications. Any applicant who is not hired for the position he feels qualified to fill can initiate a suit. Further, subversives or radical groups could file suits for the sole purpose of harassment.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act.

Effect:

Creates the same potential for harassment as Section 4. If one loses his case before the Board, he can still take it to the courts.

Section 7. Requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before a court of the Board on Employees' Rights. Reaffirms statutory authority of Directors of CIA and NSA to terminate an employee.

Effect:

The requirement for notice does not apply to CIA or NSA applicants who have a right to bring immediate action. The potential for statutory conflict still exists should the Directors terminate an employee for cause and a court order reinstatement on a finding of a violation of the act.

Section 8. Recognizes the statutory authority of the Directors of CIA and NSA to protect or withhold certain information in the national interest.

Effect:

Information which the Directors determine must withhold may actually provide the only basis for refuting unfounded allegations. Since the sanctions in the bill are against the alleged offending employee, not the Directors, the net effect of withholding information is to make the charged employee bear the consequences, which can include loss of pay and termination. However, to disclose such information with its consequential damage to the national intelligence effort is even less acceptable.

*Note: H. R. 7199 is similar, except provisions of Section 7 above are omitted and FBI is granted partial, not full exemption.

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CIA - Personnel Security and Suitability

1. The Agency has special responsibility to ensure the loyalty, security consciousness, integrity and psychological stability of its employees:

a. Soviet and other hostile services assign overriding priority to penetrating U.S. intelligence organs by identifying and exploiting personal vulnerabilities and weaknesses of our personnel.

b. Such penetration can enable the enemy to identify and neutralize our own intelligence operations; learn what we know, and don't know, about enemy capabilities and intentions; gain insights enabling the enemy to confuse and deceive us; and provide vital information about U.S. national policy, military capabilities, technology, etc., with which Agency personnel often become familiar in the course of their routine work.

c. Intelligence personnel are not only an attractive target for the enemy, but in many respects a particularly accessible one. Unlike members of most Government organizations, intelligence personnel often must carry out their demanding and sometimes dangerous assignments completely alone and in hostile areas. They are thus subject to severe psychological pressures. They are far removed from immediate supervision, or even observation by friendly colleagues. In these circumstances any latent vulnerabilities and instabilities in their character or loyalty may come to the surface and be detected and exploited by an ever-alert enemy.

d. The only protection against these hazards is a careful and thorough assessment of the individual to ensure the selection of the right man for the job.

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e. This is essential not only in the interest of the Agency and the Government, but in that of the individual as well. Many people, through no fault of their own, are subject to latent weaknesses and vulnerabilities of one sort or another, and we believe it would be a great disservice to them to impose upon them burdens for which they are unfitted, perhaps leading to unfortunate consequences for them as well as for the Agency.

2. Hence we have over the years, with the best professional advice available, devised a system of medical and psychological tests and security checks designed to identify potential problems in these fields before they can cause serious damage. In a sense these tests may be compared with the thorough assessments employed in the selection of jet pilots and astronauts-- too much is at stake to take chances with avoidable human error or weakness.

3. In the past there have been all too many cases where sensitive agencies of both the U.S. and other free world governments have suffered massive damage precisely because latent human weaknesses of individuals in key positions were detected and exploited by our enemies: several cases a few years back seriously disrupted the effectiveness of NSA; the British Intelligence Service has still not recovered from the effects of the Philby, Blake and other cases; the Germans, French and Swedes, among others, have had similar experiences; and just last year an intensive investigation was taking place in Brussels to determine the damage to NATO security resulting from an espionage case there.

4. In sum, CIA's procedures for ensuring the security and suitability of its personnel have been developed over the years on the basis of the Agency's specialized knowledge of the aims and methods of the opposition, the importance and sensitivity of the Agency's responsibilities, the best available professional advice, and the cumulative practical experience of over two decades of Agency management. These procedures have, with only the rarest exceptions, had the full understanding and support of Agency personnel. Any major changes in these procedures should be adopted only after a most careful examination of the possible consequences.

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Effect of Certain Provisions of S.1688

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held by any officer of the Executive Branch, or by any outside parties of organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter other than the performance of official duties.

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Effect:

Psychological testing in these areas is an important part of the total screening process to weed out applicants with undesirable traits. The exemption provided by Section 6 does not recognize that psychological screening is an integral part of the processing in every case.

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Effect of Certain Provisions of S. 1438

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